

**International Union, United Mine Workers of America and Boich Mining Company**

**District 6, United Mine Workers of America and Boich Mining Company**

**Local Union No. 7449, United Mine Workers of America and Boich Mining Company. Cases 8–CC–1420–1, 8–CC–1420–2, and 8–CC–1420–3**

September 23, 1992

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

On February 27, 1991, the National Labor Relations Board issued a Decision and Order<sup>1</sup> finding that the Charging Party, Boich Mining Company, and Aloe Coal Company constituted a single employer, and therefore that the Respondent Unions did not violate Section 8(b)(4)(i) and (ii)(B) of the Act as alleged by striking and picketing Boich in support of a strike at Aloe Coal. The Board dismissed the complaint.

Thereafter, Boich petitioned the United States Court of Appeals for the Sixth Circuit for review of the Board's Order. On January 31, 1992,<sup>2</sup> the court issued a decision reversing the Board's finding that Boich and Aloe were a single employer, and finding instead that Boich was a neutral employer with respect to Aloe. The court granted the petition for review and remanded the case to the Board "with instructions to reinstate the complaint, to find that the United Mine Workers (UMW) violated [Section] 8(b)(4)(i) and (ii)(B) by striking and picketing Boich, and to provide an appropriate remedy."<sup>3</sup>

On April 27, the Board notified the parties that it had accepted the court's remand and would take appropriate action consistent with the remand. On May 18, Respondent District 6 requested permission to submit a position statement regarding the liability of District 6 in this case. On May 22, the Board announced that any party might file a position statement with regard to the issues raised by the remand. Position statements were filed by Respondents UMW (the International) and District 6, and by Boich and the General Counsel. The General Counsel filed a response to the Respondents' position statements.

The Board has delegated its authority in this proceeding to a three-member panel.

Although we accept the court's decision and instructions as the law of the case,<sup>4</sup> our task on remand is

complicated somewhat by the court's instruction to us to find that the *United Mine Workers (UMW)* violated the Act. There are three Respondents in this case—the UMW International, District 6, and Local 7449. We are confident that the court's reference to the "UMW" was intended to apply at least to the International Union. It is not as clear, however, whether the court meant for the Board to find all three Respondents in violation.<sup>5</sup> Nevertheless, we infer that that was the court's intention.<sup>6</sup> The General Counsel and Boich have consistently argued that all three labor organizations violated the Act by striking and picketing Boich. If the court meant that only the International had acted unlawfully,<sup>7</sup> it gave no indication why it came to that conclusion, or why neither the District nor the Local should be found in violation. That omission is particularly significant in the case of Local 7449. According to the un rebutted testimony, the strikers' picket signs identified Local 7449 as the striking union, and no official of Local 7449 reported for work during the strike.<sup>8</sup> (The Local's president, Larry Trushel, was a Boich employee.) The record thus establishes that Local 7449 both endorsed and actively participated in the strike and picketing. See, e.g., *Mine Workers District 30 (TCH Coal)*, 278 NLRB 309 (1986), *enfd.* 819 F.2d 651 (6th Cir. 1987). There would seem to be no reason, on this record, for the court not to conclude that the Local had violated Section 8(b)(4)(i) and (ii)(B), and we infer that it did draw that conclusion.<sup>9</sup>

ordered the Board to find that the Act has been violated as alleged. The only task before us, therefore, is to determine and apply the appropriate remedy.

Indeed, it is not entirely clear whether the Respondents are asking the Board simply to take further evidence in order to explore more fully the ramifications of the court's legal analysis, or whether they also mean to imply that, after taking additional evidence, the Board would be free to come to a conclusion contrary to that reached by the court and, as a result, to fail to comply with the court's order. In either event, the Respondents' request is without merit because the court has spoken on the issue of the relationship between the two employers.

<sup>5</sup> Thus, in one passage, the court stated that "on August 4, 1989, Boich filed an unfair labor practice charge against UMW." 955 F.2d at 433. Given that Boich filed separate charges against all three Respondents on that date, it would be reasonable to interpret the court's use of "UMW" as standing for all three unions. Elsewhere, however, the court found that "[t]he UMW, is District 6 and its Local No. 7449 are labor organizations," *ibid.*, which might indicate that the court considered, "the UMW" as synonymous with "the International," and *not* encompassing the District and the Local.

<sup>6</sup> Indeed, none of the parties seems to contend otherwise.

<sup>7</sup> The International does not deny that, under the law of the case, it violated Sec. 8(b)(4)(i) and (ii)(B) by calling the strike against Boich. In response to the remand, the International argues only that the Board should reopen the record to reexamine the single-employer issue. We have already rejected that argument. See *fn. 4, supra*.

<sup>8</sup> Member Oviatt finds it unnecessary to rely on the failure of Local officials to report for work.

<sup>9</sup> The Local, in fact, does not argue that it should not be found in violation; it filed no position statement in response to the court's remand.

<sup>1</sup> 301 NLRB 872.

<sup>2</sup> Unless otherwise noted, all dates refer to 1992.

<sup>3</sup> *Boich Mining Co. v. NLRB*, 955 F.2d 431, 433.

<sup>4</sup> We therefore deny the request by Respondents International and District 6 that we reopen the record to receive further evidence concerning the relationship between Boich and Aloe Coal. The court of appeals has decided that issue and, on the basis of its decision, has

We also infer that the court intended us to find a violation on the part of District 6. As we have noted, the court ordered the Board to find that the Act had been violated by “the United Mine Workers (UMW).” That term could reasonably be construed to mean either the International Union alone (see fn. 5, *supra*), or all three Respondents together; we think it highly unlikely that the court meant it to refer to two, but not all three, of the Respondents. Having found that the term was intended to include the International and the Local, we deduce that it was meant to refer to the District as well. In addition, although the record indicates that District 6’s role in these events was chiefly, or even entirely, as a conduit for the International’s strike message to the Local,<sup>10</sup> the words “induce or encourage” in Section 8(b)(4)(i) are broad enough to include “every form of influence and persuasion.” *Electrical Workers IBEW Local 501 (Samuel Langer) v. NLRB*, 341 U.S. 694, 701–702 (1951).<sup>11</sup> Successfully inducing a work stoppage against a neutral employer constitutes a violation of Section 8(b)(4)(ii)(B) as well. *Iron Workers Local 597 (Linbeck Construction)*, 208 NLRB 524 (1974).<sup>12</sup> In light of these and similar authorities, we think it probable that the court concluded that District 6 should be found to have acted unlawfully.

#### CONCLUSIONS OF LAW

1. The Respondents, International Union, United Mine Workers of America; District 6, United Mine Workers of America; and Local Union No. 7449, United Mine Workers of America, are labor organizations within the meaning of Section 2(5) of the Act.

2. Boich Mining Company and Aloe Coal Company are persons and employers engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) and Section 8(b)(4) of the Act.

<sup>10</sup> District 6 argues that it should not be found guilty of a violation, because its only connection with the strike consisted of passing on to the Local the International’s instruction to Local 7449 to strike against Boich. District 6 contends that it had no authority to, and did not, authorize the strike or direct members of the Local to take part, and further that it did not recommend to the International that a strike be called. According to the District, such limited involvement does not constitute adequate grounds for finding a violation of Sec. 8(b)(4)(B). In arguing that a violation should be found on the part of District 6, the General Counsel and Boich cite testimony to the effect that the District *directed* Local 7449 to engage in the strike and, in any event, ratified and condoned the strike by passing on the International’s instructions and by not disassociating itself from the strike.

<sup>11</sup> Sec. 8(b)(4)(i)(B) forbids unions and their agents “to engage in, or to induce or encourage any individual . . . to engage in, a strike” for secondary purposes.

<sup>12</sup> Sec. 8(b)(4)(ii)(B) forbids unions and their agents “to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce” for secondary purposes.

3. The Respondents have engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

The consolidated complaint is reinstated.

IT IS FURTHER ORDERED that the Respondents, International Union, United Mine Workers of America; District 6, United Mine Workers of America; and Local Union No. 7449, United Mine Workers of America, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Engaging in, or inducing or encouraging any individual employed by Boich Mining Company or by any other person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is to force or require Boich or any other person to cease doing business with Aloe Coal Company.

(b) Threatening, coercing, or restraining Boich or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Boich or any other person to cease doing business with Aloe Coal Company.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post in conspicuous places at their business offices and meeting halls copies of the attached notice marked “Appendix.”<sup>13</sup> Copies of the notice, on forms provided by the Regional Director for Region 8, after being duly signed on behalf of the Respondents by their authorized representatives, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of the notice to the Regional Director for posting by Boich Mining Company and Aloe Coal Company, if those companies are willing, at all locations where notices to employees are customarily posted.

<sup>13</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

(c) Notify the Regional Director in writing within 20 days from the date of receipt of this Order what steps the Respondents have taken to comply.

#### APPENDIX

NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT engage in, or induce or encourage any individual employed by Boich Mining Company or by any other person engaged in commerce or in an industry affecting commerce to engage in, a strike or a re-

fusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is to force or require Boich or any other person to cease doing business with Aloe Coal Company.

WE WILL NOT threaten, restrain, or coerce Boich Mining Company or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Boich or any other person to cease doing business with Aloe Coal Company.

INTERNATIONAL UNION, UNITED MINE  
WORKERS OF AMERICA; DISTRICT 6,  
UNITED MINE WORKERS OF AMERICA;  
AND LOCAL UNION NO. 7449, UNITED  
MINE WORKERS OF AMERICA